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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/340,391	06/28/1999	STEVEN M BESSETTE	45112-023	3849

20277 7590 09/02/2003  
MCDERMOTT WILL & EMERY  
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WASHINGTON, DC 20005-3096

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/02/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09

340391

Applicant(s)

Bessette

Examiner

MEL Gay

Group Art Unit

146

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

7/11/02

- ☒ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1, 6, 7, 13, 18-23 is/are pending in the application.
- Of the above claim(s) 20-23 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 6, 7, 13, 18 & 19 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1, 6, 7, 13, 18-23 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Receipt is acknowledged of CPA request amendment of 10/30/02 and 11/15/02. Applicants' attorney requested, but did not follow through with interview so the following action is presented in order to advance prosecution; if necessary, interview will be granted at attorney response period.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20-23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11.

Claims 6, 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Only limited pest species at specific ratios and amounts of specific active inhibitor and synergist, as so styled by applicant, have been shown to be "controlling" control not otherwise defined. We do see Benzyl alcohol thy mol or eugenol with PBO, as providing, at best, an additive lethality effect on cockroach, compared to PBO alone; but no synergy. Nor do we see synergy with pythrins. In both instances, expected additive effects are evident. Strong residual toxicity for almost 2 months is not evident. There is No activity with BA + PBO + pyrethin after only month. The combinations ratios and amounts are clearly critical and applicable, as shown by applicant, to Cockroach mortality. A great deal of experimentation and/or testing would be required to determine blanket, or even general, susceptibility to the claimed compositions.

Claims 1, 6, 7, 13, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casida<sup>1</sup> 73 and Lover et al 4368207 or Bessette et al WO 98154971 in view of Herrera et al 41958080.

Casida teaches the use of pyrethrin and pyrethrins with synergists, inclusive (P.196. 232) of PBO and MGK 264, with for example, Pyrethrins, chrysanthemic acid and esters and pyrethrolone, identified as pyrethrum components (p.25, 26, 30) and providing insecticidal efficacy Table III, P.87. Table IV, P.89). Pyrethrins are valued for Lethality against many (P.86, bottom). Carriers were pesticidally acceptable. No benzyl alcohol was mentioned Lover shows its pediculacidal (Table 1).

Bessette uses benzyl alcohol as effective insecticide (P.4, claims 16, 23) but does not include pyrethrums. Henera uses essential oils, pyrethrum and PBO (example II).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to apply natural pesticides, effective for the target pests shown by Bessette, to use pyrethrin extracts as general insecticides with synergists PBO, MGH 264 or Sesamex, in order to minimize amount of pyrethrins required and with added benzyl alcohol and other plant essential oils of Bessette, or Lover.

Motivation to add the Bessette essential effects while minimizing effects on other species, and by Henera, teaching combination of vegetable substances without ecological upset, to kill a wide variety of insects (col. 1, lines 42-55), with particular addition of alcohols if lice are the targets.

Art Unit: 1614

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve control over pests as is well known in the art.

The primary reference discloses the essence of the instant invention as claimed, but does not specify each and every element of the instantly claimed compositions. However, the secondary references directed at same actives to solve the same problem of the primary reference do provide these additional elements.

It has not clearly been established by objective showing of some critical, unobvious and/or unexpected results that the particular form of active, carrier, or extract provides any greater level of prior art expectation as claimed.

Applicant's arguments filed on 11/15/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered, and rejection in essence maintained, with further elucidation in view of amendments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.



**NEIL S. LEVY**  
**PRIMARY EXAMINER**